

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY HALL,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 265458
Oakland Circuit Court
LC No. 2004-200029-FC

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317. Defendant was sentenced as a second habitual offender, MCL 769.10 to 60 to 90 years' imprisonment. We affirm, but remand for resentencing.

Defendant first contends that the trial court improperly admitted a statement he made to police when it should have been suppressed for any of the following four reasons: 1) it was obtained without *Miranda*¹ warnings; 2) it was the result of police coercion; 3) it was not recorded and, therefore, is inherently unreliable; or 4) the statement never occurred. We disagree; defendant is not entitled to relief on any of these grounds.

"We review a trial court's factual findings in a ruling on a motion to suppress for clear error. To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

Defendant first claims that, because he did not receive *Miranda* warnings before making the challenged statement, the trial court should have suppressed his statement. An individual is entitled to *Miranda* warnings when he is subject to custodial interrogation. *People v Cheatham*, 453 Mich 1, 11; 551 NW2d 355 (1996). The prosecution concedes that defendant was in custody, but argues that defendant was not subjected to police interrogation. We agree. At his *Walker*² hearing, defendant and the detective, to whom he made his statement, testified and gave

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

² *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

radically different accounts of what took place during their meeting. According to defendant, the detective made no attempt to read him his rights and peppered him with questions. The detective, on the other hand, testified that defendant had summoned him to the jail and, during their meeting, demanded that the detective not speak, but listen to him because he had something to get off his chest. It is the trial court's job to resolve factual issues, and this Court gives deference to the trial court's resolution of factual issues, particularly when a factual issue involves the credibility of the witnesses whose testimony conflicts. *People v Burrell*, 417 Mich 439, 448-449; 339 NW2d 403 (1983). Given that the trial court was presented with two completely different accounts and had the opportunity to observe the witnesses and evaluate their credibility, we hold that the trial court did not commit clear error by finding the detective's testimony credible.

Based on the detective's testimony, it is clear that defendant was not interrogated. Interrogation is express questioning and words or actions by the police that are likely to elicit an incriminating response. *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997). Defendant volunteered his statement, without any prompting from the detective; therefore it was not obtained in violation of his *Miranda* rights.

Defendant's second argument is that the trial court should have suppressed his statement because it was involuntary. Defendant claims that his arrest and incarceration were coercive tactics employed by police to force his confession.

When reviewing a trial court's determination of the voluntariness of inculpatory statements, this Court must examine the entire record and make an independent determination, but will not disturb the trial court's factual findings absent clear error. A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake was made. However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses. [*People v Shipley*, 256 Mich App 367, 372-373; 662 NW2d 856 (2003) (citations omitted).]

Defendant argues that his statement was involuntary because he did not know why he was in custody and a reasonable person in his position would believe that he was jailed as punishment for not confessing to the murder. The arresting officer testified that defendant was arrested for a parole violation, pursuant to a Michigan Department of Corrections warrant. Given the conflicting testimony, we are not convinced that the trial court clearly erred by finding that the officer's testimony was credible. Defendant has failed to cite any evidence, besides his own self-serving testimony, that his arrest and incarceration were pretextual or that he would not have made the statement if not for the incarceration; therefore, we affirm the trial court's finding that defendant's statement was voluntary.

Defendant also contends that the trial court should have suppressed his statement because it was not recorded, which violated his Fifth Amendment right against self-incrimination. Defendant urges this Court to adopt a broad rule requiring police to record all interviews with defendants or, in the alternative, adopt a narrow rule requiring police to record scheduled interviews with homicide suspects when only one officer is present, recording equipment is available and the statements made by the suspect contradict previous statements. We have previously decided this issue in *People v Fike*, 228 Mich App 178, 183-186; 577 NW 2d 903

(1998), and more recently in *People v Geno*, 261 Mich App 624, 627-628; 683 NW2d 687 (2004). Based on this authority, no recording requirement is imposed upon police.

Defendant's final argument on this issue is that his statement should be suppressed because it never actually occurred. However, defendant failed to address this argument in his brief. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Defendant has abandoned this issue, and we decline to review. *Id.*

Defendant next contends is that the evidence presented at trial was insufficient to sustain his conviction. Defendant claims that a rational jury could not consistently acquit him of first-degree murder, but convict him of second-degree murder because the element of premeditation was not sufficiently in dispute. We disagree.

"Taking the evidence in this light most favorable to the prosecution, the question on appeal is whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). The elements of second-degree murder are: 1) a death; 2) caused by the defendant; 3) with malice; and 4) without justification or excuse. *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001). The first element is undisputed. Regarding the second element, the prosecution established that defendant and the victim knew each other and presented circumstantial evidence, in the form of cellular telephone records, which showed that they were in contact the night of the murder. In addition, a reasonable juror could infer from defendant's cellular telephone records that defendant had ample time to commit the murder. The prosecution also presented defendant's statement to police that, once he told them what he had done he would be locked up for the rest of his life, and testimony from defendant's cellmate, that defendant confessed to him that he had strangled and stabbed the victim. While defendant argues that his cellmate's testimony is inherently suspect because he received a shorter sentence in exchange for his testimony, it is up to the jury to decide whether a witness is credible, and this Court is bound to resolve factual conflicts in favor of the prosecution. *Hardiman*, *supra* at 421. Given the circumstantial evidence, defendant's statement and his cellmate's testimony, we conclude that a reasonable jury could have found that the prosecution proved beyond a reasonable doubt that defendant caused the victim's death.

Regarding the third element, malice is defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). The victim died of manual strangulation. Death by manual strangulation is achieved by applying pressure to the victim's neck to such a degree as to deprive the victim of oxygen, whereupon the victim loses consciousness and dies. Clearly, a jury could infer that defendant intended to kill the victim when he began to choke her and did not stop when she lost consciousness.

Regarding the final element, a reasonable jury could have concluded that defendant's action was without justification or excuse. Defendant does not argue on appeal that the killing was justified or excusable, nor is there evidence in the record to support such an argument.

Therefore, we conclude that a reasonable jury could have found, beyond a reasonable doubt, that defendant committed second-degree murder. Further, we note that juries are not held to rules of logic and may choose, without any apparently logical basis what to believe or disbelieve. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). The jury in this case was properly instructed with regard to second-degree murder, and it had the ability to convict defendant for that crime. Thus, we reject defendant's assertion that reversal is required because the evidence supported a first-degree murder conviction or no conviction at all.

Defendant also contends that he was deprived of his right to a fair and impartial trial by appearing in leg irons before the jury. We disagree.

Freedom from shackling is an important component of a fair trial. Consequently, the shackling of a defendant during trial is permitted only in extraordinary circumstances. Restraints should be permitted only to prevent the escape of the defendant, to prevent the defendant from injuring others in a courtroom, or to maintain an orderly trial. This Court reviews a decision to restrain a defendant for an abuse of discretion under the totality of the circumstances. [*People v Dixon*, 217 Mich App 400, 404-405; 552 NW2d 663 (1996) (citations omitted).]

Additionally, "where a jury inadvertently sees a shackled defendant, there must be some showing that prejudice resulted." *People v Moore*, 164 Mich App 378, 384-385; 417 NW2d 508 (1987).

To begin with, defendant argues that he was denied a fair trial because the shackles were in plain view of the jury. However, he provides no citation to the record establishing this fact. Defense counsel himself, in raising the issue before the trial court on the fourth day of trial, admitted that he had not even noticed the shackles, stating, "So, I don't think there was an issue before just now." Therefore, the record does not provide a basis for a finding that the use of shackles prejudiced defendant. See *People v Dunn*, 446 Mich 409, 425; 521 NW2d 255 (1994).

Moreover, under the totality of the circumstances, we do not discern that the trial court abused its discretion. When the trial court asked the deputy about the shackles, the deputy apologized stating that they "needed to consider security" and "had too many incidents recently that we can't just ignore." The trial court agreed that security was a concern and modified the courtroom arrangement using the podium and several boxes to obscure the jury's view of the shackles. Because the trial court's decision was based on a security concern verified by the deputy and it took measures to avoid the jury's view of the shackles, there was no abuse of discretion.

Defendant also contends that the trial court abused its discretion by admitting a witness' testimony, which he claims was highly prejudicial and had little probative value. The trial court allowed testimony that defendant asked one of the victim's friends if the victim was "f---ing a lot" and whether he she had a boyfriend. Defendant argues that this testimony gave rise to the unsubstantiated inference that defendant had a sexual interest in the victim. He also argues that it was unfairly prejudicial because it had no bearing on whether defendant killed the victim, but rather, it allowed the jury to find defendant guilty of being friends with a 15-year-old girl. We disagree.

Generally, all relevant evidence is admissible at trial unless the probative value is substantially outweighed by the danger of unfair prejudice. *Aldrich, supra* at 114. Evidence is relevant if it has any tendency to make the existence of a material fact more or less probable than it would be without the evidence. *Id.*, citing MRE 401. Proof of motive in a murder case is always relevant. *People v Fair*, 165 Mich App 294, 299; 418 NW2d 438 (1987). In this case, the prosecution's theory was that defendant murdered the victim because she threatened to disclose their sexual relationship. The challenged testimony showed that defendant expressed a sexual interest in the victim. It was therefore relevant because it made the prosecution's motive theory more probable than it was without the testimony.

The evidence was not unfairly prejudicial. Unfair prejudice results when the evidence has a tendency to "adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *People v Fisher*, 449 Mich 441, 452; 537 NW2d 577 (1995), quoting *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984). Defendant argues that the evidence allowed the jury to convict him for being friends with the 15-year-old victim. However, the testimony was not sufficiently shocking to distract the jury from deciding the case based on the facts presented rather than the emotions evoked by the evidence. Thus, the testimony was not unfairly prejudicial and no abuse of discretion occurred.

Defendant's final contention is that he is entitled to resentencing because the trial court improperly scored 25 points for offense variable (OV) 13, MCL 777.43, based on three offenses that occurred ten years before the sentencing offense. The prosecution concedes that defendant is entitled to resentencing under *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006). However, the prosecution argues that resentencing is unnecessary because the trial court made statements on the record that could be construed as substantial and compelling reasons to sentence defendant above the guidelines. It is not enough that a substantial and compelling reason to sentence defendant above the guidelines may exist. *People v Babcock*, 469 Mich 247, 258-259; 666 NW2d 231 (2003). The reason or reasons must be articulated on the record as such. See *id.* Therefore, we remand for the trial court to properly resentence defendant.³

Affirmed and remanded for resentencing. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto

³ We also note that the judgment of sentence incorrectly cites MCL 750.316, the first-degree murder statute rather than MCL 750.317 for second-degree murder.